Calendar No. 1191

98TH CONGRESS
2d Session

SENATE

REPORT
98-610

EXEMPTING RESTAURANT CENTRAL KITCHENS FROM FEDERAL INSPECTION REQUIREMENTS

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 2256]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 2256) to exempt restaurant central kitchens from Federal inspection requirements, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

SHORT EXPLANATION

S. 2256 amends the Federal Meat Inspection Act and the Poultry Products Inspection Act to exempt from Federal inspection requirements certain restaurant central kitchens that operate in intrastate commerce in States designated for Federal inspection by the Secretary of Agriculture. To qualify for the exemption, a restaurant central kitchen must prepare food products that are ready to eat when they leave the restaurant central kitchen and are served to customers at restaurants operated by the same person owning or operating the restaurant central kitchen.

Under the bill, restaurant central kitchens would continue to be subject to certain recordkeeping requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act. This would provide the Secretary the authority to enter restaurant central kitchens and inspect facilities, inventory, and records. The bill would also provide the Secretary the authority to impose Federal inspection requirements for a restaurant central kitchen if the Secretary determines that sanitary conditions or processing procedures of the facility are causing products to be adulterated.

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Committee Amendment

The Committee amendment strikes out all after the enacting clause and inserts an amendment in the nature of a substitute.

Purpose and Need

Over the past several decades, new technology has brought about changes in the food service industry. With advancements in equipment and processing techniques, some segments of the industry have begun to move from decentralized meal preparation to centralized meal preparation systems. This change has been fostered by the rapid increase in fast food restaurants and the need for more traditional restaurants to be competitive with them.

Restaurants purchase raw ingredients for menu items and prepare them on site at each restaurant. These decentralized operations are becoming costly in terms of labor and equipment costs. With the use of standardized recipes and new preparation procedures, the food service industry has begun to centralize its purchasing and preparation of food products into what is known as a restaurant central kitchen.

Restaurant central kitchens process meat or poultry food products and other food items for restaurants and other outlets such as retail stores. Some restaurant central kitchens only provide meals or entrees to a limited number of their own restaurants, while others may prepare their products for resale.

Restaurant central kitchens offer several advantages over traditional restaurants. Restaurant central kitchens purchase food items in greater bulk quantities than individual restaurants, thus reducing costs. Restaurant central kitchens also benefit from reduced labor costs. Uniform quality of menu items from one restaurant to another is an additional advantage of operating a restaurant central kitchen.

The Federal Meat Inspection Act and the Poultry Products Inspection Act require food service establishments that prepare meat or poultry food products to be under Federal inspection, unless the food service establishment qualifies for an exemption as a restaurant. Restaurants that operate in intrastate commerce in States designated for Federal inspection by the Secretary of Agriculture qualify for the exemption. Restaurants that operate in interstate commerce in all States are exempt from inspection based on the Department of Agriculture's interpretation of the Acts and the opinion of the Attorney General of August 17, 1972 (42 Op. Att'y Gen. 459 (1972)).

Restaurant central kitchens and restaurants are subject to inspection by State, city, or county health department officials. However, unlike restaurants, restaurant central kitchens undergo the additional requirement of Federal inspection. Restaurant central kitchens are inspected on the same basis as meatpacking plants and processing operations and must meet the same regulatory requirements for sanitation, equipment, and facilities. For example, equipment purchases must be made from an approved list for meatpacking plants and processing operations. Compliance with these Federal requirements is very expensive and acts as a barrier to centralizing food preparation, especially for small restaurant businesses.

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In addition to facility and equipment requirements, current law mandates that restaurant central kitchens meet labeling requirements established by the Department of Agriculture for meat or poultry food products. The labeling requirement is met by obtaining approval from the Department of Agriculture for each recipe that uses meat or poultry. An approved label for beef stew, for example, would require certain types of vegetables and other ingredients to be included in the stew. Once a label is approved, a restaurant central kitchen could not substitute other ingredients that are in season. This prevents the central kitchen from making cost reductions that could be passed on to consumers.

Not all restaurant central kitchens are suitable for exemption from Federal inspection. For instance, there are large central kitchens that supply food products for sale to a variety of outlets, such as airlines or retail stores, and they should continue to operate under Federal inspection. In fact, these types of restaurant central kitchens view Federal inspection as providing an added measure of quality control. However, restaurant central kitchens supplying food products to their own restaurants are burdened by Federal regulation. These facilities are very similar to traditional restaurants and should be regulated in much the same manner. With certain limitations, the bill would extend the current exemption from inspection requirements for restaurants to include the operations of those central kitchens that are essentially retail restaurant facilities, that is, establishments that prepare food products that are ready to eat and that are served, without an intervening sale, only to customers at restaurants owned by the same person owning or operating the central kitchen.

Under the Committee's amendment to the bill, the Secretary would be provided with the specific authority to gain access to restaurant central kitchens and to examine their facilities, inventory, and records. The amendment would also provide the Secretary with the authority to impose inspection requirements should problems be discovered that led to the production of adulterated meat or poultry products.

The Committee believes that the exemption of restaurant central kitchens from Federal inspection would not affect the wholesomeness of meat or poultry food products prepared by restaurant central kitchens. Restaurant central kitchens would continue to be inspected by State, city, or county health department officials. Also, the adulteration and misbranding provisions of the meat and poultry inspection Acts would continue to apply, notwithstanding the exemption from the inspection requirements. Thus, consumers would continue to be assured that they will receive wholesome, unadulterated, and properly labeled meat and poultry products.

Committee Consideration

The Committee met on Thursday, September 13, 1984, to consider S. 2256.

Senator Huddleston, on behalf of himself and Senator Melcher, offered an amendment as a substitute for the bill. In addition to providing an exemption from Federal inspection requirements for certain restaurant central kitchens, the amendment would provide the Secre-

tary of Agriculture the authority to enter restaurant central kitchens and inspect facilities, inventory, and records. The amendment would also provide the Secretary the authority to impose Federal inspection requirements on a restaurant central kitchen if the Secretary determines that conditions or processing procedures of the facility have led to the production of adulterated products. The amendment was adopted by voice vote.

By voice vote, the Committee ordered S. 2256 reported, as amended, with a recommendation that it pass.

Section-By-Section Analysis

The Federal Meat Inspection Act and the Poultry Products Inspection Act provide for the inspection of meat, meat food products, poultry, and poultry products and otherwise for the regulation of the processing and distribution of such articles to prevent the movement or sale of meat and poultry products that are adulterated or misbranded. There are certain exemptions authorized under the Acts that have been applied to these requirements.

Section 301(c)(2) of the Federal Meat Inspection Act provides that the requirements of the Act for inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat, and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. This exemption applies to operations of restaurants in intrastate commerce in those States in which the Department of Agriculture has assumed inspection under section 301(c).

Section 1 of the bill would amend section 301(c)(2) of the Federal Meat Inspection Act by adding an exemption for certain restaurant central kitchens. Operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares meat or meat food products that are ready to eat when they leave such facility and are served in meals or as entrees only to customers at restaurants owned or operated by the same person, firm, or corporation owning or operating such facility.

Section 1 of the bill also provides that such a restaurant central kitchen facility will be subject to the provisions of section 202 of the Federal Meat Inspection Act. In addition, the facility may be subject to the inspection requirements under title I of that Act for as long as the Secretary of Agriculture deems necessary, if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its meat or meat food products are rendered adulterated. Section 202 of the Federal Meat Inspection Act requires certain classes of persons firms, or corporations to keep records and afford the Secretary, or an authorized representative of the Secretary, access to their places of business and opportunity to examine their facilities, inventory, and records, to copy records, and to take samples of inventory.

Section 5(c)(2) of the Poultry Products Inspection Act provides that the provisions of that Act requiring inspection of the slaughter of poultry and the processing of poultry products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. As in the case of section 1 of the bill, the exemption applies to operations of restaurants in intrastate commerce in those States where the Department of Agriculture has assumed inpsection under section 5(c) of the Poultry Products Inspection Act.

Section 2 of the bill would amend section 5(c)(2) of the Poultry Products Inspection Act by adding an exemption for certain restaurant central kitchens. Operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares poultry products that are ready to eat when they leave such facility and are served in meals or as entrees only to customers at restaurants owned or operated by the same person owning or operating such facility.

Section 2 of the bill also provides that such a restaurant central kitchen facility will be subject to the provisions of section 11(b) of the Poultry Products Inspection Act. In addition, the facility may be subject to the inspection requirements of that Act for as long as the Secretary deems necessary, if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its poultry products are rendered adulterated. Section 11(b) of the Poultry Products Inspection Act requires certain classes of persons to keep records and afford the Secretary, or an authorized representative of the Secretary, access to their places of business and opportunity to examine their facilities, inventory, and records, to copy records, and to take samples of inventory.

Administration Views

Chairman Helms received a letter dated June 21, 1984, from Deputy Secretary of Agriculture Richard E. Lyng, expressing the Departments' support for S. 2256, with clarifying amendments. The amendments suggested by the Department have been incorporated in the bill. The letter from the Department reads as follows:

Department of Agriculture,
Office of the Secretary,
Washington, DC, June 21, 1984.

Hon. Jesse Helms,
Chairman, Committee on Agriculture, Nutrition and Forestry,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: This is in response to your request for a report on S. 2256, a bill "To exempt restaurant central kitchens from Federal inspection requirements." S. 2256 would amend section 301(c)(2) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the Poultry Products Inspection

Act (PPIA) (21 U.S.C. 454(c)(2)) by deeming the operations of such facilities to be operations of restaurants for purposes of the application of the Acts' inspection requirements, if a restaurant central kitchen prepares food products that are ready to eat when they leave such facility and are served only to customers at restaurants owned or operated by the owner or operator of the restaurant central kitchen.

The U.S. Department of Agriculture (USDA) supports enactment of the bill with clarifying amendments. To assure further that the scope of the exemption respective to restaurant central kitchens does not extend beyond that which was intended in S. 2256, the Department recommends adoption of the enclosed amended language by the Committee.

Sections 3–6 of the FMIA (21 U.S.C. 603–606, 623) require the Federal inspection of all meat food products prepared for commerce in any "slaughtering, meat canning, salting, packing, rendering, or similar establishment" unless the operations of the establishment are exempted. Section 301 of the FMIA (21 U.S.C. 661) requires "at least equal to" State inspection for meat and meat food products prepared solely for distribution in intrastate commerce. Under paragraph (c)(2) of that section, the provisions of the FMIA requiring inspection do not apply to operations of types traditionally and usually conducted at retail stores and restaurants in any designated state when sold in normal retail quantities or such articles are served to consumers at such establishments. This exemption applies only to operations of restaurants in intrastate commerce in designated states, those states in which the Department has assumed inspection. An exclusion from routine inspection requirements also applies to operations of restaurants in interstate commerce in all states based upon the Department's construction of the above-cited provisions of the Act in conjunction with the Opinion of the Attorney General of August 17, 1972. However, the exemption provided by section 301(c)(2) has been interpreted as not extending to the preparation of meat food products at the central kitchens of restaurant chains for service at their restaurants. Central kitchen operations are analogous to those performed at centralized facilities by chain stores for distribution to their stores for retail sale. Such central facilities have received Federal inspection for many years; and as indicated above, "at least equal to" State inspection is required where distribution is solely within a non-designated State.

The PPIA has similar inspection and exemption provisions with respect to the slaughter of poultry and processing of poultry products (21 U.S.C. 454 and 455). However, section 15 of the PPIA (21 U.S.C. 464) provides additional exemptions for small poultry producers (i.e., those processing no more than 20,000 turkeys or other poultry during a calendar year). Paragraph (c)(1)(D) of that section authorizes the Secretary to promulgate regulations and conditions exempting the processing of poultry products by a poultry producer or other person solely for intrastate distribution "by him . . . directly to household consumers, restaurants, hotels, and boarding houses, for use in their own dining rooms, or in the preparation of meals for sales direct to consumers. . ."

In recent years, the food service industry has moved to more centralized meal preparation systems. A number of factors have contributed to this change. Central kitchens can achieve economics through

volume production and help to assure that uniform quality products are served to their clientele at different restaurant locations. Small restaurant businesses utilize such facilities in order to remain competitive with rapidly growing large restaurant chain and fast food operations.

S. 2256 would expand the current exemption for restaurants to include the operations of those central kitchens that are retail restaurant facilities: establishments that prepare food products which are ready to eat and served only to customers at restaurants without an intervening sale. Thus, the bill is consistent with the underlying purpose of the current law and would serve to recognize the changes in the retailing of food by restaurants.

In 1978, the Food Safety and Inspection Service (FSIS) conducted a nationwide survey to determine the types and numbers of central kitchens operating in the United States. The survey identified over 850 central kitchens, 16,500 caterers, and 2,677 establishments which are a combination of the two foregoing categories. Forty central kitchens and 65 caterers of these were under Federal inspection. FSIS estimates that 18 staff years costing $397,000 were required to inspect these 105 federally inspected operations. Because this figure includes all 105 operations, the cost for inspecting the central kitchen operations should be somewhat lower. Also, because restaurant central kitchens are increasingly being used as a way of serving multiple restaurants, we believe the actual number of central kitchens covered by this bill is greater than the number in operation in 1978. The Department has begun collecting information to determine the number of central kitchens now in operation which would be exempted from inspection requirements under the bill. We will supply the committee with this information as soon as it is available. Additional savings may be possible ince the Department funds 50 percent of the State inspection programs which are responsible for inspecting central kitchen operations operating in intrastate commerce.

Federal inspection of central kitchens and catering facilities, in most instances, is in addition to local government inspection and licensing requirements. Local health ordinances and licensing requirements help to insure proper sanitation and handling of products.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD E. LYNG,
Acting Secretary.

Enclosure.

AMENDED LANGUAGE TO S. 2256 AS RECOMMENDED BY THE U.S. DEPARTMENT OF AGRICULTURE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 301(c)(2) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(2)) is amended by adding the following sentence at the end thereof: "For the purposes of this subparagraph, operations conducted at a restaurant central kitchen facility shall be considered

as being conducted at a restaurant if the restaurant central kitchen prepares [meat] food products that are ready to eat when they leave such facility and [are] served [in meals or as entrees] only to customers at restaurants owned or operated by the [same] person, firm, or corporation owning or operating such facility.".

SEC. 2. Section 5(c)(2) of the Poultry Products Inspection Act (21 U.S.C. 454(c)(2)) is amended by adding the following sentence at the end thereof: "For the purposes of this subparagraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares [poultry] products that are ready to eat when they leave such facility and [are] served [in meals or as entrees] only to customers at restaurants owned or operated by the [same] person owning or operating such facility.".

COST ESTIMATE

I.

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that savings to the Federal Government in excess of $300,000 for each of the next 5 fiscal years will result from enactment of this legislation.

II.

The Committee's cost estimate is consistent with a cost estimate for the legislation that was prepared by the Congressional Budget Office. The Congressional Budget Office estimate is contained in a letter transmitted to Chairman Helms that reads as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 17, 1984.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2256, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry on September 13, 1984.

This bill would exempt restaurant central kitchens from federal inspection requirements under both the Federal Meat Inspection and Poultry Products Inspection Acts. The Food Safety and Inspection Service (FSIS) currently inspects 282 restaurant central kitchens. Forty of these would be exempt from inspection, as this bill applies only to kitchens that prepare ready-to-eat food products served to customers at restaurants that are owned or operated by the owner or operator of the central kitchen. FSIS expects to save about $300,000 in each fiscal year as a result of enactment of this legislation.

NOTE.—Recommended changes in brackets.

The budgets of state and local governments would not be directly affected by the enactment of this legislation.

CBO previously prepared an estimate of a similar bill, H.R. 5223, as ordered reported by the House Committee on Agriculture on June 21, 1984. We estimated savings to the federal government to be less than $500,000 in each fiscal year, based on 1978 FSIS data. The current estimate is based on a survey recently completed by FSIS.

If you wish further details on this estimate, we will be pleased to provide them. Carmela Pena (226–2820) is the CBO staff contact on this estimate.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 2256.

Impact on individuals and businesses

S. 2256, as reported by the Committee, will lessen Federal regulation of those restaurant center kitchens exempted by the bill. Approximately 40 restaurant central kitchens will be immediately affected by the bill. However, current Federal regulatory requirements have acted as an economic barrier to the growth of restaurant central kitchens. It is likely that the bill will encourage some restaurants to adopt the central-kitchen system.

Economic impact

The immediate economic impact of the bill will be minimal due to the small number of restaurant central kitchens that will be affected. However, the removal of Federal regulations that have acted as a barrier to the establishment of restaurant central kitchens may have a positive economic impact on the economy due to improved competition in the restaurant industry.

Impacts on personal privacy of individuals

The bill will not have an impact on the personal privacy of owners or operators of restaurant central kitchens. The bill will result in a decrease in paperwork.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL MEAT INSPECTION ACT

* * * * * * *

SEC. 301(c) * * *

(2) The provisions of this Act requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments if such establishments are subject to such inspection provisions only under this paragraph (c). *For the purposes of this subparagraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares meat or meat food products that are ready to eat when they leave such facility and are served in meals or as entrees only to customers at restaurants owned or operated by the same person, firm, or corporation owning or operating such facility: Provided, That such facility shall be subject to the provisions of section 202 of this Act: Provided further, That the facility may be subject to the inspection requirements under title I of this Act for as long as the Secretary deems necessary, if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its meat or meat food products are rendered adulterated.*

* * * * * * *

POULTRY PRODUCTS INSPECTION ACT

* * * * * * *

SEC. 5(c) * * *

(2) The provisions of this Act requiring inspection of the slaughter of poultry and the processing of poultry products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments if such establishments are subject to such inspection provisions only under this paragraph (c). *For the purposes of this subparagraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares poultry products that are ready to eat when they leave such facility and are served in meals or as entrees only to customers at restaurants owned or operated by the same person owning or operating such facility: Provided, That such facility shall be subject to the provisions of section 11(b) of this Act: Provided further, That the facility may be subject to the inspection requirements of this Act for as long as the Secretary deems necessary, if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its poultry products are rendered adulterated.*

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Calendar No. 1192

98TH CONGRESS
2d Session

SENATE

REPORT
98-611

GEORGIA WILDERNESS ACT OF 1984

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 2773]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 2773) to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

SHORT EXPLANATION

The bill, as reported by the Committee, would designate 2 areas (totaling approximately 14,439 acres) in the national forests in the State of Georgia as wilderness areas and as components of the National Wilderness Preservation System. The bill provides for the Secretary of Agriculture to administer the areas designated as wilderness by the bill in accordance with the provisions of the Wilderness Act, to promptly file maps and legal descriptions of the designated areas with appropriate committees of Congress, and to make the maps and descriptions available for public inspection.

Further, the bill contains language to ensure that National Forest System lands in the State of Georgia that were studied in the Department of Agriculture's second roadless area review and evaluation and not designated as wilderness by the bill are released for such uses as are deemed appropriate through the national forest management planning process. The bill also prohibits, unless expressly authorized by Congress, any further statewide

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roadless area review and evaluation of National Forest System lands in Georgia for purposes of considering the wilderness suitability of such lands.

COMMITTEE AMENDMENT

The Committee amendment to the text of the bill strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute. In addition to making technical and other clerical changes, the substitute incorporates the compromise release language agreed to earlier this year.

The Committee amendment to the title of the bill is clerical in nature.

PURPOSE AND NEED FOR LEGISLATION

S. 2773 has as its purpose the designation of two additions to wilderness areas in the national forests in the State of Georgia. The legislation is the result of a review by the United States Department of Agriculture conducted during the period of 1977 through 1979 and termed the second roadless area review and evaluation (RARE II). That study examined the lands of the National Forest System nationwide and, through the final environmental impact statement issued by the Department of Agriculture in January 1979, recommended designation of these lands as wilderness, including the two areas that would be designated by S. 2773.

The bill would also ensure that national forest lands not designated as wilderness or for wilderness study are released for such uses as are determined appropriate through the national forest land management planning process.

WILDERNESS DESIGNATIONS

Currently, there are 5 wilderness areas in Georgia totaling approximately 400,000 acres. The national forest lands that would be designated as wilderness by S. 2773 total approximately 14,439 acres. They are located in the Chattahoochee National Forest. The areas to be designated as wilderness contain unique plant and animal life, stands of virgin timber, streams excellent for swimming and fishing, and high mountains. The areas provide opportunities for hunting, fishing, hiking, and camping in a wild setting.

The steep, scenic terrain of both Ellicott Rock and Southern Nantahala discourages timber management practices. Wilderness protection of these two areas will ensure the preservation of some of the most outstanding scenic areas of Rabun County in which most of both proposed wilderness areas lie.

The two areas designated as wilderness would become part of the National Wilderness Preservation System. They would be managed by the Forest Service under provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131–1136).

A description of the wilderness proposals of the bill follows:

Ellicott Rock Wilderness Addition

This proposal comprising approximately 2,000 acres was recommended for wilderness by the Forest Service in RARE II. It would

be incorporated in, and deemed to be a part of, the Ellicott Rock Wilderness located in the Chattahoochee National Forest in Georgia. This proposed addition is characterized by its rugged topography, sharp ridges, dense vegetation, and narrow valleys of the southern highland country. The area is located in the high ranges of the Southern Appalachian chain of the Blue Ridge Mountains. Notable peaks include Glade Mountain, Redside Mountain, and Bee Bait Mountain which together form a ridge delineating the southwestern boundary.

The Chattooga River, a national Wild and Scenic River, flows from north to south through the area. Flanking the river, steep terrain and high ridges dominate. The vegetation consists of Appalachian hardwood types and a mixture of some pine and hemlock. The area is of considerable botanical interest and is believed to contain threatened or endangered plant and animal species.

Southern Nantahala Wilderness

This area containing approximately 12,439 acres was recommended for wilderness by the Forest Service in RARE II, and is also located in the Chattahoochee National Forest, It is one of the most remote and unique, rugged land masses south of the Great Smoky Mountains and is bisected by the Blue Ridge Divide. Most of the area is above 3,000 feet in elevation and contains the State's third and fourth highest peaks, Hightower Bald and Dicks Knob, and it also includes the headwaters of the Tallulah River, Coleman River, and several small streams. A prominent landmark of the area is Standing Indian Peak, at 5,499 feet. The headwaters of the Nantahala River begin east of the peak.

Vegetation consists primarily of Appalachian hardwoods with red oak, chestnut oak, yellow poplar and hickory being some of the species. Portions of the area have hemlock and pine mixed with the hardwoods. Wildlife within the area include whitetail deer, black bear and, possibly, mountain lion plus an assortment of smaller game and nongame animals. The area also provides a habitat for 54 species of rare or uncommon plants that are found at no other place in Georgia.

A portion of the Appalachian Trail crosses some of the high ridges and peaks of the area.

SUFFICIENCY AND RELEASE LANGUAGE

Background

In 1924, when the U.S. Forest Service decided it should manage wilderness as one of the many uses to be made of the National Forest System, it established the Gila Wilderness Reserve in the Gila National Forest in New Mexico. The pupose was to keep some parts of the Nation's forests in the condition in which mankind had found them, both as scientific benchmarks against which civilization's works could be compared and as recreational refuges for people who wanted to temporarily get away from the stresses of civilization. During the next 40 years, the Forest Service administratively established more of these areas, mostly in the West, from which evidence of human technology and development are substatially excluded.

In 1964, this wilderness concept became national policy when Congress passed the Wilderness Act and established the National Wilderness Preservation System. That System incorporated the 9.1 million acres that had been set aside by the Forest Service over the previous 4 decades. Generally the Wilderness Act specifies that within wilderness areas there will be no roads, no timber harvesting, no structures or installations, and no use of motor boats or landing of aircraft. Each wilderness area was to be an area where man was a visitor who did not remain.

The Wilderness Act gave the Forest Service 10 years to complete studies of the national forest primitive areas—areas temporarily reserved from access pending study of their suitability for wilderness designation. In addition, Congress provided that no future wilderness could be created in the national forests, except by Act of Congress. However, Congress did not preclude the management of lands within the National Forest System for primitive, roadless recreation, within the concept of multiple-use management.

As the Forest Service began its review of primitive areas within the national forests in the late 1960's to determine the suitability for wilderness designation of specific tracts, a number of problems arose in connection with established timber management plans. In many forests, after new sales were advertised, administrative protests were filed, charging that a particular sale would violate the statutory concept of multiple use. Usually, the allegation was that the proposed sale was in an area that should be designated as wilderness or that should be devoted to unstructured recreation with no harvesting of timber. As timber sales became tied up in such appeals and the orderly management of the national forests disintegrated, the Forest Service instituted the first roadless area review and evaluation (RARE I) as the planning process to resolve the problems.

By 1973, RARE I had resulted in the selection of 274 wilderness study areas containing approximately 12.3 million acres. The other roadless areas in the RARE I inventory, having been considered and rejected for possible wilderness designation, were not protected as wilderness and remained in their full multiple-use status.

The National Environmental Policy Act (NEPA) became law on January 1, 1970. It required the Executive Branch, before making any major decision having a significant impact on the human environment, to prepare an assessment of the environmental impact of the proposed action. The NEPA was the basis of a lawsuit filed in 1972, as the RARE I process was nearing completion, that charged that the Forest Service must prepare environmental impact statements on roadless areas that were supposedly returned to multiple-use management. The Federal District Court for the Northern District of California agreed that the agency was subject to the decisionmaking process prescribed by NEPA, and all development activities on the roadless areas were stopped. See *Sierra Club* v. *Butz,* Civ. No. 72-1445-SC (N.D. Cal. 1972) 3 Environmental Law Reporter 20071.

As a result of restricted sources of timber supplies, tremendous pressures were placed on the remaining National Forest System lands that remained open to timber harvesting. In some forests, timber sale levels dropped dramatically below the allowable cuts.

In other forests, timber sale levels were maintained, but sales were concentrated on lands outside the RARE I roadless areas. In these forests, the concentration of sales at the full sales volume on a limited area produced fears that these available areas would be overcut to the detriment of land and watersheds.

It was obvious that a remedy was needed for this situation, and the Forest Service decided that a faster planning process was the answer. Thus, the second roadless area review and evaluation (RARE II) was formulated to expedite the planning process for roadless areas. RARE II began in June 1977 and was intended to survey the roadless and undeveloped areas within the National Forest System and to distinguish areas suitable for wilderness designation from those most appropriate for other uses. The areas found suitable for wilderness would be recommended for addition to the National Wilderness Preservation System through congressional action. The remaining roadless lands would be allocated to nonwilderness uses determined under the multiple-use planning process, or allocated to further study.

On April 16, 1979, President Carter made final recommendations to Congress based on the review of 2,919 identified roadless areas encompassing 62 million acres in the National Forest System. The Administration recommended that wilderness designation be given to approximately 15.1 million acres of the original 62-million acre roadless inventory. Another 10.8 million acres of roadless lands were determined to require further planning before decisions were made on their future management. The balance of the areas, which totaled about 36 million acres, were allotted to nonwilderness, multiple-use management.

Much litigation has occurred since the RARE II recommendations. This has had a direct bearing on congressional consideration of wilderness legislation. In June 1979, the State of California challenged the RARE II wilderness and nonwilderness allocations on National Forest System lands in that State. *California* v. *Bergland,* 483 F. Supp. 465 (E.D. Cal. 1980). The State and various environmental organizations which joined the lawsuit claimed that the RARE II final environmental impact statement was legally flawed. On January 8, 1980, the Federal district court agreed with the State's position, finding that the environmental statement for RARE II was deficient under the provisions of the National Environmental Policy Act. The Court ruled that a more site-specific analysis of wilderness qualities was required for 46 of the areas allocated for nonwilderness. Additionally, the Court found flaws in the RARE II analysis process. As a result, the Court enjoined any development in the 46 disputed areas, pending preparation of an adequate environmental impact statement. The major points of the district court ruling were affirmed by the Ninth Circuit Court of Appeals. *California* v. *Block*, 690 F. 2d 753 (9th Cir. 1982).

The ruling by the Court of Appeals that the RARE II environmental impact statement was deficient had a significant impact on Forest Service activities. Although the decision applied specifically only to the 46 roadless areas in California, it was binding on other Federal district courts in the Ninth Circuit (comprising the States of California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, Alaska, and Hawaii) and could be cited in States outside the

Ninth Circuit's jurisdiction. The reasoning of the decision produces uncertainty regarding the RARE II study for other States. Management of roadless areas not designated as wilderness is subject to challenge through administrative appeals and lawsuits. In fact, such challenges have occurred. There have been three lawsuits filed in the Northwest that rely extensively on *California* v. *Block.* In *Earth First* v. *Block* (Civil No. 83-6298-ME-RE, D. Oreg.), the United States District Court for the District of Oregon enjoined the Forest Service from taking or permitting any action which would be inconsistent with the wilderness character of a roadless area in Oregon until the requirements of *California* v. *Block* and the NEPA have been met. Similarly, in *Kettle Range Conservation Group* v. *Block* (Civil No. C-83-590-JLQ, E.D. Wash.), the Forest Service was enjoined from taking or permitting any action which will change the wilderness characteristics of four roadless areas in Washington. In December 1983, the Oregon Natural Resources Council brought suit against the Forest Service in an attempt to enjoin any activity which would impair the wilderness characteristics of approximately 2.25 million acres of roadless lands in Oregon until the requirements of NEPA have been met. That suit is pending. *Oregon Natural Resources Council* v. *Block,* Civil No. 83-1902, D. Oreg.

In February 1983, Assistant Secretary of Agriculture John B. Crowell, Jr., announced that all roadless areas studied for wilderness potential during RARE II would be subject to reevaluation. This reevaluation was to be done as a part of the National Forest System land management planning process then underway for 120 national forest planning units and scheduled for completion in 1985.

The desire to avoid further wilderness study and to preclude litigation directed at stopping the continuation of management activities on roadless areas led to a search for a legislative solution. Provisions termed "sufficiency" and "release" language were the outcome of that search. Such language has appeared in legislation designating wilderness areas in Colorado, New Mexico, Alaska, Missouri, West Virginia, and Indiana. That language, which was generally patterned after the Colorado wilderness bill, continued to trouble a number of affected industry groups, and in an effort to address their concerns, Congress developed and agreed on a new version of the so-called "release" language, which is included in the bill.

The status of National Forest System areas designated for further planning by RARE II and lying east of the 100th meridian was also placed in doubt by a case originating in North Carolina. The Eastern Wilderness Act designated certain National Forest System lands as wilderness and designated other lands as wilderness study areas. That Act directed the Secretary of Agriculture to review the study areas for their suitability or nonsuitability for wilderness designation and to make recommendations to the President, including recommendations for wilderness study areas. In *Southern Appalachian Multiple Use Council* v. *Bergland* (No. A-C-80-1, W.D. N.C.), a Federal district court ruled, in relying on the Eastern Wilderness Act, that the Secretary had no authority to administratively designate "further planning" areas (and thereby administrative-

ly withhold any management activities in the area pending the completion of the study and determination of the area's status), but only to *recommend* areas to be designated as wilderness study areas. The court also ruled that the Secretary could manage the areas recommended so as not to impar their suitability for wilderness, pending congressional action. The ruling had an effect on the land management planning process on eastern national forests (those affected by the provisions of the Eastern Wilderness Act) insofar as the evaluation of areas for wilderness suitability is concerned. Under the court's ruling, forest plans on national forests east of the 100th meridian cannot recommend areas for wilderness designation, rather they can only recommend to Congress that such areas be studied for their wilderness suitability.

Sufficiency and judicial review of the RARE II environmental statement

The bill contains language relating to the sufficiency of the RARE II final environmental impact statement. As previously discussed, the need for the language arises because of a Federal district court decision in *California* v. *Bergland, supra,* in which it was held that the RARE II environmental impact statement, as it applied to 46 areas considered for wilderness in California, had insufficiently considered the wilderness alternative for the areas. Activities that would impair the wilderness characteristics of the areas were enjoined until subsequent reconsideration of wilderness was completed. This action creates uncertainty over the management of some nonwilderness areas, where administrative or judicial appeals could halt some activities until adequate environmental impact statements are prepared. The Committee, in considering the bill, has reviewed the roadless areas in Georgia. It believes that the RARE II final environmental impact statement, insofar as National Forest System lands in Georgia are concerned, is sufficient, and, therefore, the bill provides that such environmental statement shall not be subject to judicial review.

Release, management, and future wilderness consideration of nonwilderness areas

The RARE II process during 1977 through 1979 took place concurrently with the development by the Forest Service of a new land management planning process mandated by the National Forest Management Act of 1976 (NFMA). That process requires the national forest land management plans to be reviewed and revised periodically to provide for a variety of uses on the land. During the review and revision process, the Forest Service is required to study a broad range of potential uses and options for each national forest. NFMA provides that the option of recommending land to Congress for inclusion in the National Wilderness Preservation System is only one of the many options that must be considered during the planning process for those lands which may be suited for wilderness designation. The Forest Service is presently developing the initial, or "first generation", plan for each national forest. These are the so-called "section 6" plans, and they are scheduled for completion by September 30, 1985. Upon implementation, these plans will be in effect for 10 to 15 years before being revised and updated.

One of the goals of RARE II was to consider the wilderness potential of National Forest System roadless areas. The Committee believes that further consideration of the wilderness option during development of the initial plans for the National Forest System roadless areas in Georgia, as defined in section 5 of the bill, and during the period when the initial plan is in effect, would be duplicative of studies and reviews that have already been made by both the Forest Service and Congress. Therefore, the bill provides that the RARE II evaluation or the reference to certain other lands constitutes an adequate consideration of the suitability of these roadless areas for inclusion in the National Wilderness Preservation System and no further review by the Department of Agriculture shall be required prior to the revision of the initial land management plan for the national forest. This provision is necessary to ensure that these lands will be considered as functioning units of the national forests and has the practical effect of releasing these lands for multiple uses other than wilderness.

The NFMA provides that a national forest management plan shall be in effect for no longer than 15 years before it is revised. The Forest Service regulations, however, provide that a forest plan "shall ordinarily be revised on a 10-year cycle or at least every 15 years." (36 CFR 219.10(g).) The language of the bill tracks these regulations.

By tying future review of the wilderness option to revision of initial plans, the Committee intends to make it clear, consistent with the NFMA and current Forest Service regulations, that amendments to a plan, including those that might result in a significant change in a plan, would not trigger the need for reconsideration of the wilderness option. The wilderness option does not need to be reconsidered until the Forest Service determines (1) based on a review of the lands covered by a plan, that conditions in the area covered by a plan have changed so significantly that the entire plan needs to be completely revised, or (2) that the statutory 15-year maximum life span of the plan is expiring.

A revision of a forest plan is a costly undertaking in terms of dollars and manpower and the Committee does not expect such an effort to be undertaken lightly. When required by changing conditions, the Forest Service should make very effort to address local changes in land management plans through the amendment process, reserving the revision option only for major, forest-wide changes in conditions.

For example, if a new powerline is proposed to be built across a forest, any modification of the applicable forest plan to permit the line to be built would be accomplished by an amendment, not a revision, and therefore the wilderness option would not have to be reexamined. It is only when a proposed change in management would significantly affect overall goals or uses for the entire forest that revision would be made. An example of such a situation is the recent eruption of Mt. St. Helen. Because it affected so much of the land in the Gifford Pinchot National Forest, including the forest's overall timber harvest schedule, the necessary changes in the applicable forest plan would likely be considered a revision of the plan. In this regard, the Committee notes that in the vast majority of cases the 10- to 15-year planning cycle established by the NFMA

and in the existing regulations is short enough to accommodate most changes in circumstances without triggering more frequent plan "revisions". It is highly unlikely that conditions will change so dramatically during the 10- to 15-year planning cycle that anything more comprehensive than a plan amendment would be required.

It is not likely that primitive, semiprimitive, or motorized recreation use would change so rapidly over an entire national forest that the Forest Service or the Federal courts would be justified in concluding that the conditions in the forest are so significantly changed as to justify making a plan revision prior to the normal 10- to 15-year life span for the existing plan. For example, recreation use might increase in a specific area or areas resulting in changed conditions in the forest itself. In the judgment of the Forest Service, such changes could be met by amending the plan, as opposed to revising it. This is not to say that an increase in demand for recreation in a given area will automatically, in and of itself, constitute a valid requirement for even a plan amendment. In addition, it is not the Committee's intent, nor, in the judgment of the Committee, the intent of any Federal statute, to force the Forest Service into either plan amendments or revisions as a result of changes in use patterns in the national forests.

The Chief of the Forest Service has indicated that, in his view, most plans will be in existence for 10 years before they are revised. The Committee shares this view and anticipates that plans will not be revised in advance of their anticipated maximum life span absent extraordinary circumstances. The Committee understands and expects that the first generation plans will be completed by late 1985 in most cases and the time of revision for most plans will begin about 10 years from the date of implementation for each plan. Accordingly, the Committee expects that the wilderness option for any area will not be reexamined again until the plans have been in effect for 10 years, unless the area is specifically designated as a wilderness study area by Congress.

The Committee notes that administrative or judicial appeals may mean that some of the first generation plans will not actually be implemented until the late 1980's, and plan revisions would not take place until a 10-year period has elapsed from the date each plan is implemented. If the full 15 years allowed by NFMA elapses before a revision is made, the wilderness option may not in some cases be reviewed until the year 2000 or later.

The question has also arisen as to whether a revision would be triggered if the Forest Service is directed by the courts to modify or rework an initial plan, or if the Forest Service withdraws an initial plan to correct technical errors or to address issues raised by an administrative appeal. The Committee wants to make it as clear as possible that any reworking of an initial plan for such reasons would not constitute a revision of the plan and would not require the reconsideration of the wilderness option for the lands covered by the plan.

This position is based on the fact that court-ordered or administrative reworkings or modifications of a plan would most likely come about to resolve inadequacies in the preparation of the plan under the requirements of NFMA and other applicable laws. Since

the NFMA, and the implementing regulations, specify that a plan revision will only occur when the Secretary finds that there has been a significant change in conditions in the forest planning unit, or at least once every 10 to 15 years, it is clear that such reworking or modification would not be a revision for at least two reasons: (1) the modification would not be the result of any significant change in conditions in the forest planning unit and (2) a plan must be properly prepared and implemented before it can be revised.

The fact that the wilderness option for roadless areas will be considered in the future during the planning process raises the hypothetical argument that areas not designated for wilderness must be managed to preserve their wilderness attributes so that they may be considered for such designation in the future. This interpretation, if accepted as correct, would result in all roadless areas being kept in the "de facto" wilderness status indefinitely. Such a requirement would be detrimental to the orderly management of nonwilderness lands and the goals of the Forest and Rangeland Renewable Resources Planning Act of 1974.

To eliminate any possible misunderstanding on this point, the bill provides that areas not designated as wilderness need not be managed for the purpose of protecting their suitability for future wilderness designation pending revision of the initial plans. The intent is that these lands be managed for multiple uses in accordance with the land management plan. However, the Georgia portion of the Big Frog Wilderness Study area will continue to be managed to maintain its wilderness character.

The Forest Service already has statutory authority to manage roadless areas for multiple uses other than wilderness. The Committee wishes to make clear, however, that study of the wilderness option in future generations of "section 6 plans is required only for those lands that may be suited for wilderness designation at the time of the development of such future plans. During the lifetime of each generation of plans, then, the forest land and other resources can, in fact, be put to the uses that are authorized in the plan. In short, one plan will remain in effect until the second plan is implemented, and the forest will be managed in accordance with the plan that is in effect, even if such management may result in the land no longer being suited for wilderness.

Thus, it is likely that areas evaluated for wilderness suitability in one generation of plans may not physically qualify for wilderness consideration by the time the next generation of plans is prepared. For example, the Committee notes that many areas that were studied for wilderness in the RARE II, recommended for nonwilderness, and released administratively in April of 1979, may no longer qualify as suitable wilderness study areas as a result of approved multiple-use activities having been carried out.

Under this provision, it is the Committee's intent and understanding that the Forest Service may conduct a timber sale in a roadless area being managed for multiple-use purposes other than wilderness and not be challenged on the basis that the area will be spoiled for consideration as wilderness in a future planning cycle. Once into a second-generation plan, the Forest Service may, of course, manage a roadless area according to that plan without the necessity of preserving the wilderness option for the third-genera-

tion planning process. Should the particular area still qualify for possible wilderness designation at the time of the third-generation planning process, which is likely in many cases, the wilderness option for the area would be considered at that time under the requirements of NFMA. In short, the wilderness option must be considered in each future planning generation for all of the areas in each planning unit that still possess the required wilderness attributes. There is no requirement, however, that these attributes be preserved for the purpose of maintaining the suitability of the affected areas for future evaluation as wilderness in the planning process.

In the Committee's judgment, the Forest Service is not required to manage multiple-use lands in a "de facto" wilderness manner. Of course, the Forest Service can, if it determines such action appropriate, manage lands to preserve their natural undeveloped characteristics if the applicable plan calls for such management. Likewise, the Forest Service can, if through the land management planning process it determines such action appropriate, provide for other multiple uses on lands that have not been designated as wilderness or as wilderness study areas by Congress. The Forest Service should be able to manage all nonwilderness lands in the manner determined appropriate through the land management planning process.

However, the bill also provides that lands recommended for wilderness designation in future generations of land management plans must be managed to protect their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA, and other applicable law.

In arriving at this position, the Committee has carefully considered and balanced the wishes and concerns of many varied interest groups involved in this issue, and wishes to emphasize the vital importance of completing and implementing the forest plans in Georgia and ending the state of uncertainty over appropriate land management that now exists in the national forests.

In order to eliminate the land management uncertainty with regard to as much of the National Forest System land in Georgia as possible, the bill provides that the release and sufficiency provisions of the bill also apply to National Forest System roadless lands in Georgia that are less than 5,000 acres in size.

NO FURTHER STATEWIDE WILERNESS REVIEW

With regard to the possibility of the Forest Service undertaking future administrative reviews similar to RARE I and RARE II, since the National Forest Management Act of 1976 planning process is now in place, the Committee wishes to see the development of any future wilderness recommendations by the Forest Service take place only through that planning process, unless Congress expressly asks for additional evaluations through authorizing legislation. Therefore, the bill prohibits the Department of Agriculture from conducting any further statewide roadless area review and evaluation of National Forest System lands in Georgia for the purpose of determining their suitability for inclusion in the National

Wilderness Preservation System. This provision does not prohibit the Forest Service from considering the wilderness option during a normal plan revision when the entire State is covered by a single plan.

COMMITTEE CONSIDERATION

HEARINGS

On Wednesday, July 25, 1984, the Subcommittee on Soil and Water Conservation, Forestry, and Environment, chaired by Senator Roger Jepsen, held a hearing on S. 2773, the Georgia Wilderness Act of 1984.

F. Dale Robertson, Associate Chief, Forest Service, testified for the Department of Agriculture. Mr. Robertson stated that currently, there are 5 wildernesses in Georgia totaling approximately 400,000 acres. S. 2773 would designate two wilderness additions on the Chattahoochee National Forest in Georgia. Approximately 2,000 acres would be added to the 7,000-acre Ellicott Rock Wilderness, and approximately 12,440 acres would be added to the 10,900-acre Southern Nantahala Wilderness.

Ellicott Rock Additions in Georgia, North Carolina, and South Carolina were recommended for wilderness in the roadless area review and evaluation (RARE II). The Southern Nantahala Area in Georgia and North Carolina was also recommended for wilderness in RARE II. The North Carolina portions of these areas have already been designated as wilderness and Mr. Robertson testified that the Department continues to support designation of the remaining Georgia and South Carolina portions of these areas.

Mr. Robertson stated that the Department supports enactment of S. 2773 if amended in several respects. He stated that the release language in the bill is similar to the recent Senate/House compromise, but needs some revision so that it is consistent with that compromise language.

With respect to the provision excluding certain areas from the release language of the bill and requiring that these areas be considered for all uses, including wilderness, during preparation of the forest plan for the Chattahoochee National Forest. Mr. Robertson stated that Raven Cliff, Brasstown, and Wolf Pen were recommended for wilderness in the RARE II final environmental impact statement and the Department sees little value in studying these areas further. Therefore, the Department recommends that S. 2773 designate those areas as wilderness.

He further stated the RARE II decision for Mountaintown was nonwilderness, and the Department recommends that it be deleted from the further planning areas listed in the bill and be released for uses other than wilderness.

Next to testify was a panel consisting of Mr. G. Robert Kerr, Executive Director, Georgia Conservancy; Mr. Randall Snodgrass, Southeastern Regional Director, The Wilderness Society; Mr. Steven Bowling, Botanical Consultant; and Ms. Andrea O. Timpone, President, Friends of the Mountains.

Mr. Kerr represented three coalitions interested in the bill: the Georgia Conservancy, the Southern Highlands Coalition, and the

Georgia RARE II Environmental Council. He stated their belief that the two areas, Southern Nantahala and Ellicott Rock Extension, belong in the wilderness system. He concured with the release language in the bill, but expressed concern with that portion of section 5 of the bill that remands 10 areas to the Forest Service management planning process for decisionmaking as to their wilderness suitability.

Mr. Kerr agreed with the Department of Agriculture that Congress must make the decision on wilderness and requested that section 5 of S. 2773 be amended to designate the 10 areas as wilderness study areas if Congress chooses not to designate the areas as wilderness. He also urged the Forest Service to manage these areas so as not to impair their wilderness values until Congress has an opportunity to act.

Mr. Snodgrass expressed support for S. 2773 and stated The Wilderness Society would like to see the 10 areas not released—Raven Cliff, Wolf Pen, Brasstown, Tray Mountain, Chattahoochee, Blood Mountain, Overflow, Mountaintown, Hemp Top, and Rich Mountain—protected in the near future. He said that until Congress can decide the fate of these areas, they should be protected as formal wilderness study areas.

Mr. Bowling testified to the scientific reasons and advantages for holding certain forest areas in an unmanaged state and discussed reasons for recommending that the proposed Geogia additions to the Southern Nantahala and Ellicott Rock Wildernesses be included in the National Wilderness Preservation System.

Ms. Timpone stated that she represented the mountain constituency in north Georgia that is in support of wilderness and expressed the support of this group from the bill. Ms. Timpone stated that wilderness designation is necessary to protect the land from irreversible changes, such as roadbuilding and logging, which will ensure that the areas will never again have the value of wilderness.

COMMITTEE MARKUP

The Committee met in open session on Thursday, September 13, 1984, to consider S. 2773.

In his opening statement, Chairman Helms noted that the Georgia wilderness bill was just one of six bills to be considered by the Committee that would add new areas to the National Wilderness Preservation System. Consideration of these bills, together with four wilderness bills considered by the Committee and signed into law earlier this year, indicates that the Committee takes seriously its responsibility to provide clear direction for forestry policy regarding wilderness and other matters. Chairman Helms noted that the preservation of these additional wilderness areas will leave a legacy that will provide unlimited opportunity for primitive recreation and enjoyment for those choosing to visit the areas.

Senator Huddleston questioned the Forest Service on their efforts to obtain the privately-held mineral rights on existing wilderness areas and whether the exercise of those rights is a growing problem. Douglas MacCleery, Deputy Assistant Secretary for Natural Resources and Environment of the Department of Agriculture,

responded that since most of the national forest lands in the eastern United States were acquired from private owners who retained the subsurface mineral rights, it would be very expensive to acquire all of those rights, and the Forest Service does not buy those rights when it makes new acquisitions. The Forest Service deals with this issue on a case-by-case basis, and if a private owner elects to exercise his mineral rights, the Forest Service looks at the impact it might have on the wilderness value and makes a decision as how best to proceed. This factor is also taken into consideration when the Department makes recommendations on which areas are appropriate for wilderness designation.

After a brief explanation of the bill, Chairman Helms, on behalf of Senators Nunn and Mattingly, offered an amendment that would make technical and clerical changes in the bill and incorporate the compromise release language agreed to earlier this year. The amendment was adopted by voice vote.

By voice vote, the Committee ordered S. 2773 reported, as amended, with a recommendation that it pass.

Section-by-Section Analysis

Short title

Section 1 provides that the bill may be cited as the "Georgia Wilderness Act of 1984".

Designation of wilderness areas

Section 2 designates certain National Forest System lands in Georgia, totaling approximately 14,439 acres, as wilderness areas and as components of the National Wilderness Preservation System as follows:

(1) approximately 2,000 acres in the Chattahoochee National Forest, as generally depicted on a map entitled "Ellicott Rock Wilderness Addition—Proposed", dated June 1984, which are incorporated in and deemed to be part of the Ellicott Rock Wilderness as designated by the Eastern Wilderness Act (Public Law 93-622); and

(2) approximately 12,439 acres in the Chattahoochee National Forest, as generally depicted on a map entitled "Southern Nantahala Wilderness—Proposed", dated June 1984, which shall be known as the Southern Nantahala Wilderness.

Maps and descriptions

Section 3 provides that, as soon as practicable after enactment of the bill, the Secretary of Agriculture is required to file maps and legal descriptions of the areas designated as wilderness in the bill with the House Committees on Agriculture and on Interior and Insular Affairs and with the Senate Committee on Agriculture, Nutrition, and Forestry. In addition, this section provides that the maps and descriptions shall have the same force and effect as if included in the bill, except that correction of clerical and typographical errors may be made by the Secretary. The maps and descriptions must be on file and available for public inspection in the Office of the Chief of the Forest Service.

Administration of wilderness

Section 4 requires that, subject to valid existing rights, each of the areas designated as wilderness by the bill be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act, except that any reference in those provisions to the effective date of that Act would be deemed to be a reference to the date of enactment of the bill.

Effect of RARE II

Section 5(a) contains congressional findings to the effect that the Department of Agriculture has completed the second roadless area review and evaluation (RARE II) and that Congress has made its own evaluation of National Forest System roadless areas in Georgia, including reviewing the environmental impacts associated with alternative uses of these areas.

Section 5(b) provides that Congress determines and directs, with respect to the National Forest System lands in Georgia except lands specified in section 5(e), that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Georgia, such final environmental statement shall not be subject to judicial review;

(2) to the extent such lands were reviewed in the RARE II or otherwise referenced in subsection (d), the RARE II review and evaluation or reference shall be considered to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System for the purposes of the initial land management plans required by law. Also, the Department shall not be required to review the wilderness option for such lands prior to revision of the initial land management plans but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a 10-year cycle, or at least every 15 years, unless, prior to that time, the Secretary finds that conditions in a unit have significantly changed;

(3) to the extent such lands were reviewed in the RARE II final environmental statement, or otherwise referenced in the bill and not designated as wilderness, such nondesignated lands shall be managed for multiple-use purposes in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, except that such lands need not be managed to protect their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans are implemented, areas not recommended for wilderness designation in any such revisions need not be managed to protect their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed to protect their suitability for wilderness designation as may be required by applicable law; and

(5) unless expressly authorized by Congress, the Department shall not conduct any additional statewide roadless area review and evaluation of such lands for the purpose of determining the suitability of any additional areas for inclusion in the National Wilderness Preservation System.

Section 5(c) provides that, as used in the bill and in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1984, as amended, the term "revision" does not include an "amendment" to a plan.

Section 5(d) provides that the release provisions of the section also apply to National Forest System roadless lands in Georgia that are less than 5,000 acres in size.

Section 5(e) provides that the provisions of section 5 shall not apply to—

(1) the Georgia portion of the Big Frog Wilderness Study Area as designated by Public Law 93-622; and

(2) the following areas in the Chattahoochee National Forest, Georgia, as generally depicted on a map entitled "Chattahoochee National Forest RARF II Inventory", dated June 1984, and which are know as—

(A) "Raven Cliff", comprising approximately nine thousand one hundred acres;

(B) "Overflow", comprising approximately five thousand acres;

(C) "Blood Mountain", comprising approximately nine thousand four hundred acres;

(D) "Chatahoochee River", comprising approximately twenty-one thousand six hundred acres;

(E) "Tray Mountain", comprising approximately thirty-six thousand six hundred acres;

(F) "Hemp Top", comprising approximately two thousand seven hundred acres;

(G) "Mountain Town", comprising approximately six thousand seven hundred acres;

(H) "Rich Mountain", comprising approximately fifteen thousand six hundred acres;

(I) "Brasstown", comprising approximately three thousand six hundred acres; and

(J) "Wolf Pen", comprising approximately seven thousand seven hundred acres.

These areas are to be considered for all uses, including wilderness, during preparation of a forest plan for the Chattahoochee National Forest pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended.

Administration Views

On August 6, 1984, Chairman Helms received a report from Secretary of Agriculture John R. Block expressing the Department's support for the enactment of S. 2773 if amended as suggested in the report. This report, along with the portion of the July 25, 1984, testimony to the Subcommittee on Soil and Water Conservation, Forestry, and Environment presented by Mr. F. Dale Robertson, Associate Chief of the Forest Service, on S. 2773 follow:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, August 6, 1984.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We would like to offer our views on S. 2773, a bill "To designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes."

The Department of Agriculture recommends that the bill be enacted if amended as suggested herein.

S. 2773 would designate two wilderness additions on the Chattahoochee National Forest in Georgia. Approximately 2,000 acres would be added to the 7,000-acre Ellicott Rock Wilderness, and approximately 12,440 acres would be added to the 10,900-acre Southern Nantahala Wilderness.

Ellicott Rock Additions in Georgia, North Carolina, and South Carolina were recommended for wilderness in the Roadless Area Review and Evaluation (RARE II). The Southern Nantahala roadless area in Georgia and North Carolina was also recommended for wilderness in RARE II. The North Carolina portions of these areas have already been designated wilderness. We continue to support designation of the remaining undesignated Georgia and South Carolina portions of this area.

S. 2773 includes release language similar to the recent Senate/House compromise, but needs some revision so that it is consistent with that compromise language. The release provision also identifies specific areas that are excluded from the release. These areas are: the Georgia portion of the Big Frog wilderness study areas which is currently being proposed for wilderness designation in the "Tennessee Wilderness Act of 1984", Raven Cliff, Overflow, Blood Mountain, Chattahoochee River, Tray Mountain, Hemp Top, Mountaintown, Rich Mountain, Brasstown, and Wolf Pen. These areas would be further planning areas and be considered for all uses, including wilderness during preparation of the Forest plan for the Chattahoochee National Forest.

Three of these further planning areas—Raven Cliff, Brasstown and Wolf Pen—were recommended for wilderness in the RARE II Final Environmental Impact Statement. We see little value in studying these further. We recommend that S. 2773 designate these areas as wilderness.

The RARE II decision for Mountaintown was nonwilderness. This decision was made because of non-Federal mineral rights, existing system roads, a designated off-road vehicle trail, and wildlife openings that are part of the Cohutta Wildlife Management Area. We recommend that Mountaintown be deleted from the further planning areas listed in the bill and be released for uses other than wilderness.

In the case of *Southern Appalachian Multiple Use Council vs. Bergland,* decided in 1981 by the United States District Court for the Western District of North Carolina, the court held that when further planning areas east of the 100th meridian are studied as

part of the land management planning process outlined in the National Forest Management Act, one of two broad decisions can be reached. The decision can be either to manage the area for multiple-use purposes other than wilderness or to recommend the area to Congress for designation as a wilderness study area.

There remains some question in this bill whether the Secretary of Agriculture can make a recommendation for wilderness rather than wilderness study to Congress as a result of the Forest plan. To clarify this question, we recommend that the last sentence of section 5.(e) be changed by deleting the period and adding the following clause at the end: "and the Secretary may forward a recommendation for wilderness designation to the Congress based on such plan."

With these amendments that would designate three additional areas, revise the release provision, release the Mountaintown area, and clarify section 5.(e), we support enactment of this bill.

We estimate that the costs of surveying, planning, and related activities necessary to implement the bill, if amended as we suggest, would be approximately $100,000 over the next 5 years.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK,
Secretary.

STATEMENT OF F. DALE ROBERTSON, ASSOCIATE CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Before the Subcommittee on Soil and Water Conservation, Forestry, and Environment of the Senate Committee on Agriculture, Nutrition and Forestry

Concerning S. 2773, S. 2805, H.R. 5121 and S. 2808, July 25, 1984

Mr. Chairman and members of the committee, it is a pleasure to join you here today as you consider several bills that would designate portions of the National Forests in Georgia, Mississippi, and Virginia as components of the National Wilderness Preservation System.

S. 2773—The "Georgia Wilderness Act of 1984"

Currently, there are five wildernesses in Georgia totaling approximately 400,000 acres.

S. 2773 would designate two wilderness additions on the Chattahoochee National Forest in Georgia. Approximately 2,000 acres would be added to the 7,000-acre Ellicott Rock Wilderness, and approximately 12,440 acres would be added to the 10,900-acre Southern Nantahala Wilderness.

The Department of Agriculture recommends enactment of S. 2773 if amended as described in my testimony.

Ellicott Rock Additions in Georgia, North Carolina and South Carolina were recommended for wilderness in the Roadless Area Review and Evaluation (RARE II).

The Southern Nantahala Area in Georgia and North Carolina was also recommended for wilderness in RARE II. The North Carolina portions of these areas have already been designated as wilderness. We continue to support designation of the remaining Georgia and South Carolina portions of this area.

S. 2773 includes release language similar to the recent Senate/House compromise, but needs some revision so that it is consistent with that compromise language. The release provision also identifies specific areas that are excluded from the release. These areas are: the Georgia portion of the Big Frog wilderness study area which is currently being proposed for wilderness designation in the "Tennessee Wilderness Act of 1984", Raven Cliff, Overflow, Blood Mountain, Chattahoochee River, Tray Mountain, Hemp Top, Mountaintown, Rich Mountain, Brasstown, and Wolf Pen. These areas would be further planning areas and be considered for all uses, including wilderness during preparation of the Forest plan for the Chattahoochee National Forest.

Three of these further planning areas—Raven Cliff, Brasstown and Wolf Pen—were recommended for wilderness in the RARE II Final Environmental Impact Statement. We see little value in studying these areas further. We recommend that S. 2773 designate these areas as wilderness.

The RARE II decision for Mountaintown was nonwilderness. This decision was made because of non-Federal mineral rights, existing system roads, a designated off-road vehicle trail, and wildlife openings that are part of the Cohutta Wildlife Management Area. We recommend that Mountaintown be deleted from the further planning areas listed in the bill and be released for uses other than wilderness.

In the case of *Southern Appalachian Multiple Use Council* vs. *Bergland,* decided in 1981 by the United States District Court for the Western District of North Carolina, the court held that when further planning areas east of the 100th meridian are studied as part of the land management planning process outlined in the National Forest Management Act, one of the two broad decisions can be reached. The decision can be either to manage the area for multiple use purposes other than wilderness or to recommend the area to Congress for designation as a wilderness study area.

There remains some question in this bill whether the Secretary of Agriculture can make a recommendation for wilderness rather than wilderness study to Congress as a result of the Forest plan. To clarify this question, we recommend that the last sentence of section 5.(e) be changed by deleting the period and adding the following clause at the end: "and the Secretary may forward a recommendation for wilderness designation to the Congress based on such plan."

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of S. 2773 would result in a cost to the Federal Government of approximately $100,000 over the next 5 fiscal years. However, small savings in land management planning costs over the next 3 years

will result from certain areas being released from further wilderness review during the period of the initial land management plans.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 17, 1984.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2773, the Georgia Wilderness Act of 1984, as ordered reported by the Senate Committee on Agriculture, Nutrition and Forestry, September 13, 1984.

This bill adds 14,439 acres of land in Georgia to the national wilderness preservation system. Based on information from the National Forest Service (NFS), we estimate that additional costs to the federal government for surveying, planning and related activities necessary to implement the wilderness withdrawals will be approximately $100,000 over the five fiscal years beginning with 1985.

All roadless areas in national forests not designated as wilderness or expressly excluded from further review by an act of the Congress are currently being reevaluated for their suitability for inclusion in the national wilderness preservation system. S. 2773 removes from this review all roadless areas in Georgia included in the Department of Agriculture's second Roadless Area Review and Evaluation (RARE II) during the period of the initial land management plan. This will result in a small savings in land management planning costs over the next three years.

Enactment of this bill would not significantly affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2773. The bill would designate certain lands in the State of Georgia as components of the National Wilderness Preservation System.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

Subject to valid existing rights, the Wilderness Act prohibits future harvesting of timber and future entry for mineral extraction on lands included in the National Wilderness Preservation System. Enactment of the bill will result in approximately 14,439 acres

being placed in the National Wilderness Preservation System, and, thereby, will restrict uses other than wilderness on such land.

Wilderness designation will result in restricting private individuals' motorized use of public lands. Activities which have previously occurred, such as firewood gathering, motorized access for hunting and fishing, and trail bike riding, will be terminated.

A wilderness permit may be required of individuals using certain wilderness areas and, therefore, limited personal information would be collected in administering the program. It is anticipated that the impact on personal privacy would be minimal.

The bill will not result in any significant additional paperwork or recordkeeping requirements.

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